

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,983

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare finding that he is not eligible for Medicaid. The issue is whether or not the petitioner is disabled within the meaning of the regulations.

FINDINGS OF FACT

1. The petitioner is a forty-nine-year-old man (D.O.B. June 2, 1945) who finished the seventh grade. He is able to read some words in print but none in cursive. He is unable to read the front page of a newspaper or write a simple note. His wife reads important documents to him and fills out applications for him. He can add and subtract.
2. The petitioner has worked since he was fourteen and his principle occupation has been as a logger, a job he has done for almost twenty years, although he has also worked in a sawmill, a woolen mill and with a well-drilling operation, all work which involved heavy labor. In his logging job, he typically worked 5-6 days per week and 9-10 hours per day, and was averaging about \$20,000 per year in 1990. In March of 1990, he had an accident while tipping a logging skidder which resulted in a twisted back and a year of rehabilitation. He returned to work but deteriorated again and was unable to work as a logger due to back pain by July of 1993.
3. The medical records show that the patient was extensively treated during 1990 for back pain radiating into the right buttock and leg. It was initially thought that he might have a herniated disc and surgery was recommended. However, by December of 1990 X-rays showed that he had no herniated disc but rather degenerative disc disease at the L4-5 level. He was treated conservatively with therapy and pain killers at that time.
4. Since 1993, the petitioner has continued to have pain in his lower back radiating into his right leg with concomitant stiffness of the right knee. He has not, however, had extensive medical care during that time due to a lack of money. He collected unemployment compensation for a while and while doing so looked for light labor jobs but was unable to find any.

5. In May of 1994, X-rays were again taken which showed that the petitioner had a markedly narrowed disc space in the L5-S1 area of the spine, suggestive of degenerative disc disease. A consultant who saw him on May 13, 1994, observed some minor movement limitations in his back and tightness in the back and leg muscles. He was unable to draw any conclusions about his work capacity and suggested repeat CT or MRI tests for a more complete understanding of the etiology of his pain. He did not think, however, that it was likely that he had a disc protrusion and nerve root compression.

6. The petitioner currently experiences pain in his lower back and pelvis which shoots down his right leg. The pain is stabbing and sharp and occurs on a repeated basis every day. Because of pain, the petitioner is unable to walk on a cement floor for more than a few minutes, or on any surface for more than 500-600 yards without pain. He can stand no more than ten minutes at a time. He also has difficulty sitting for more than fifteen minutes or so. The petitioner spends about six to seven hours per day in a reclining chair for relief from pain. He also takes Motrin and Anacin to relieve the pain.

7. The petitioner lives with his wife who works days in a wood factory and does most of his shopping, cooking and laundry for him. On a typical day, the petitioner awakens at 4:00 a.m. after a fitful night's sleep in which he alternates two hours of sleeping with two hours of wakefulness. He does little housework, other than washing some dishes for short periods of time. He cannot sweep, vacuum or do any work which requires him to stretch out or bend over. He takes at least two naps per day.

8. Based on the entirely credible testimony given by the petitioner it is found that he is functionally illiterate, that he has difficulty sitting for more than fifteen minutes due to pain, that he can stand for only a few minutes and walk only very short distances due to pain and is limited by back pain to lifting only very light objects.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner, as the Disability Determination Service agrees, has met his burden of proving that because of a medical impairment he can no longer perform any of his prior occupations. The burden thus shifts to the Department to show that the petitioner has the residual functional capacity to do other work considering his age, education and work experience. 20 C.F.R. § 416.961.

The Department seeks to meet its burden by relying on the Medical Vocational Guidelines at 20 C.F.R. § 404 Subpart P, Appendix 2, Rules 202.16 to 202.22 to prove that there is other work which the

petitioner can do. Those guidelines determine that a "younger individual", aged 18-49, who is limited to light work is not disabled in spite of his level of education or lack of skilled work experience.

"Light work" is defined in the regulations as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing or pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as a loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. 416.967(b)

The evidence clearly shows that the petitioner cannot do the standing, walking or lifting necessary for even light work. At best, he could be categorized as a person capable of sedentary work which is defined as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. 416.967(a)

Although it is doubtful that the petitioner's medical condition could even place him in this work category, the guideline directions for even sedentary workers would dictate a finding of disabled for the petitioner based upon his age of forty-nine, his functional illiteracy, and his unskilled job history. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.17. Even if the petitioner were literate and capable only of sedentary work, the guidelines would also dictate that he be found disabled on his fiftieth birthday, which is only four months away. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.09. As such, it must be found that he meets the definition of disability contained in the regulations.

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